The court approves the doctrine that a completed guaranty on a separate instrument would not pass without assignment. The better view seems to be that a guaranty on the obligation itself will pass without special assignment,[6] at least if the instrument be negotiable, but a guaranty on a separate instrument is generally held not to pass in this way.[7] It would seem, however, that such guaranties are intended to give security to the obligation, whether written on the instrument itself or on a separate paper, and whether the instrument be "negotiable" or not, and so are intended to inure to the benefit of any bona fide holder of the obligation. They have, in some cases, been held to pass as incidents to the obligation,[8] under the rule of equity that assignment of the debt carries with it all securities.[9] This seems to be a more reasonable view than to hold that guaranties, like warranties, are restricted to the first vendee, and must be specially assigned to pass to assignees of the debt. But, as has been shown, there was no completed guaranty in the principal case, and it is doubtful whether an executory contract to sign a guaranty can be held to be a subsisting security, and so pass with the obligation. It appears, then, that A has received his consideration, has actually, though not legally, misled the purchaser of the bonds, and still escapes liability on his contract. A possible remedy might be for B to assign to C the contract to guarantee the bonds and for C to bring his action on that agreement.

J. S. M., Jr.

HIGHWAYS: EXTENT OF POWER TO REGULATE USE BY AUTOMOBILES.—In sustaining the validity of the code section[1] requiring the driver of an automobile, or other vehicle, to stop and render assistance and give his name and license number to any person struck, or the occupants of any vehicle collided with, the District Court of Appeal for the Second District, in *People v. Diller*,[2] said that the driver of an automobile in using the highway is in the exercise of a privilege, not a right, and that the legislature may impose such conditions as it sees fit for permitting such use. To this point the court cites and approves a decision of the New York Court of Appeals.[3] In general, all vehicles have a right to use the

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[6] Lemmon v. Strong (1890), 59 Conn. 448, 22 Atl. 293, 12 L. R. A. 270.

[7] McLaren v. Watson's Exrs. (1841), 26 Wend. 425, 37 Am. Dec. 260; but see dissenting opinion of Verplanck, Senator, for statement of the view that such guaranties should pass with the debt.

[8] Craig v. Parkis (1869), 40 N. Y 181, 100 Am. Dec. 469; Union Oil Co. v. Maxwell (1889), 33 Ill. App. 421.

[9] Hurt v. Wilson (1869), 38 Cal. 263. See also Duncan v. Hawn (1894), 104 Cal. 10, 37 Pac. 626 (statutory lien on threshing machines for labor passes to assignee of the claim).

[1] Cal. Pen. Code, § 367 c.

[2] (June 17, 1914), 18 Cal. App. Dec. 899, 142 Pac. 797.

[3] People v. Rosenheimer (1913), 209 N. Y. 115, 102 N. E. 530, 46 L.

highway, regardless of novelty, or possible inconvenience to existing means of transportation,[4] but this right is qualified by the similar rights of others,[5] and is subject to reasonable regulations imposed by proper authority.[6] Automobiles have been held not to be "dangerous instrumentalities", operated only at peril,[7] but exclusion from particular roads or districts has been upheld in a number of cases on account of dangers which would arise from their use.[8] Exclusion from the roads of an entire province was upheld in a Canadian case,[9] but this case can probably be distinguished on account of the greater freedom given to legislatures under the English system, if not by reason of particular dangers from the use of automobiles on the roads of Prince Edward's Island. A California case[10] went rather far in upholding the validity of a county ordinance excluding automobiles from the highways at night, the court taking judical notice of the tendency of such machines to frighten horses, but even here it was said, "if the use of automobiles gradually becomes more common, there may come a time when an ordinance like the one here in question would be unreasonable". It would seem that any general exclusion of automobiles would now be unreasonable, in view of the fact that there are well over one hundred thousand of them in operation in California, and the ample provisions, when used, for their safe operation. The code section may be upheld as a reasonable and proper measure for the protection of travellers against reckless driving.[11] It applies to all vehicles and so, if invoked against the driver of a horse-drawn vehicle, it certainly could not be supported on the ground of tolerated use, but must rest on some such ground

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R. A. (N. S.) 977, reversing the Supreme Court, in 130 N. Y. Supp. 544, 146 App. Div. 875, a majority of which court held that a similar statute was opposed to the constitutional privilege from self incrimination. The court, in the principal case, declined to pass on this point, no question of criminal negligence in connection with the accident being involved. See also, Ex Parte Kneedler (1912), 243 Mo. 632, 147 S. W. 983, 40 L. R. A. (N. S.) 622, also cited with approval in the principal case.

[4] Christy v. Elliott (Ill., 1905), 1 L. R. A. (N. S.) 215, n; Macomber v. Nichols (1876), 34 Mich. 212, 22 Am. Rep. 522.

[5] McIntyre v. Orner (1906), 166 Ind. 57, 76 N. E. 750, 4 L. R. A. (N. S.) 1130.

[6] Prim v. Jones (1895), 11 Utah 200, 39 Pac. 825, affirmed by the United States Supreme Court in 165 U. S. 180, 41 L. Ed. 677, 17 Sup. Ct. Rep. 286.

[7] Steffen v. McNaughton (1910), 142 Wis. 49, 124 N. W. 1016, 26 L. R. A. (N. S.) 382.

[8] Com. v. Kingsbury (1908), 199 Mass. 542, 85 N. E. 848, 127 Am. St. Rep. 513; State v. Mayo (1909), 106 Me. 62, 75 Atl. 295, 26 L. R. A. (N. S.) 502 and note; State v. Phillips (1910), 107 Me. 249, 78 Atl. 283.

[9] In Re Rogers (1909), 7 East Law Rep. (Can.) 212, 15 Ann. Cas. 1167.

[10] In Re Berry (1905), 147 Cal. 523, 82 Pac. 44, 109 Am. St. Rep. 160.

[11] Hall v. Compton (1908), 130 Mo. App. 675, 108 S. W. 1122; Christy v. Elliott (Ill., 1905), 1 L. R. A. (N. S.) 215, n.

as suggested above. It seems a rather dangerous doctrine to extend the police power to an unnecessary degree by holding that a now common means of transportation can be excluded from the highways. This might easily be made the entering wedge for a further extension of this already extensive power to a minute regulation and even extinction of lawful occupations, and the breaking down of the constitutional guarantees of liberty and property under the guise of public protection.

J. S. M., Jr.

JURISDICTION OF A COURT OF PROBATE IN GRANTING LETTERS OF ADMINISTRATION.—In *Estate of Daughaday*[1] the court sitting in probate in determining its jurisdiction to grant letters of administration states the rule to be that if a non-resident leaves no estate in the county in which letters of administration are petitioned for there is no reason for issuance of such letters. The majority of jurisdictions seems to be in accord with this view that the interest of a non-resident decedent must at least appear to have some value in order to give a court jurisdiction for granting letters of administration. As to what constitutes assets, it has been held that an equitable claim is sufficient;[2] to the same effect, a right of action for negligent injury causing death,[3] an interest in an action at law[4] and the mere fact that a claim is doubtful or even unenforceable is immaterial[5] as the validity is not a question for a court of probate to decide, but the court, exercising its discretion, may deny letters where the claim is not of reasonable or colorable value.[6]

If the decedent is a resident in or an inhabitant of the county in which letters are petitioned for, in the absence of statutory requirement, the possession of an estate is not a jurisdictional prerequisite to the appointment of an administrator even where the applicant is merely a creditor.[7] In Watson v. Collins' Adm'r[8]

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[1] (June 20, 1914), 47 Cal. Dec. 736, 141 Pac. 929.

[2] Estate of Daughaday, supra, note 1.

[3] Missouri Pac. R. R. Co. v. Lewis (1888), 24 Neb. 848, 40 N. W. 401, 2 L. R. A. 67.

[4] Murphy, Neal & Co. v. Creighton (1876), 45 Iowa 179.

[5] Sullivan v. Fosdick (1877), 10 Hun. 173; Parsons v. Spaulding (1880), 130 Mass. 83.

[6] Estate of Daughaday, supra, note 1.

[7] Holburn v. Pfanmiller's Adm'r. (1903), 114 Ky. 831, 71 S. W. 940.

[8] (1861), 37 Ala. 587. See also, Wheat v. Fuller (1887), 82 Ala. 572, 2 So. 628; Duff v. Duff (1886), 71 Cal. 513, 521, 12 Pac. 570; Contra, In re Murray (1878), Myr. Prob. (Cal.), 208; Flood Adm'r v. Pilgrim (1873), 32 Wis. 376; Merriweather v. Kenard (1874), 41 Tex. 273. As against collateral attack it would seem that the grant of letters of administration is conclusive, Irwin v. Scriber (1861), 18 Cal. 499; Connors v. Cunard S. S. Co. (1910), 204 Mass. 310, 90 N. E. 601; Andrews v. Avory (1858), 14 Gratt. 229, 73 Am. Dec. 355, except, of course, as to the fact of death, Stevenson v. Superior Court (1882), 62 Cal. 60.